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ABSTRACT

The legal and historical developments leading to the tuition-free waivers for American Indians at Fort Lewis College, Colorado, along with such topics as the 1970 change in policy and the decision to limit Indian tuition waivers, are discussed in the 1971 report submitted to the Colorado General Assembly by the Committee on Indian Enrollment Problems, appointed in 1970 by the Legislative Council. The State Board of Agriculture and the college administration actions to limit Indian tuition-free waivers had aroused opposition by Indian students and Indian organizations. However, the committee found that tuition-free admission of Indians was on a collision course with the budgetary limitations set by the General Assembly. The committee examined the moral and legal obligations of the state and recommended House Bill 1452, which, while attempting to resolve questions concerning legal obligations, recommends continuation of the special program of Indian education. The committee also recommended tuition policies for resident and nonresident Indians and suggested possibilities for seeking outside funding. Appendixes include historical legal documents concerning Fort Lewis College and the Colorado Attorney General's legal opinion concerning state law and Fort Lewis College. (FF)

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Report to the Colorado General Assembly

INDIAN ENROLLMENTS AND TUITION WAIVERS AT FORT LEWIS COLLEGE

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COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 167

MARCH, 1971

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OF THE

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* * * * * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

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INDIAN ENROLLMENTS AND TUITION WAIVERS AT FORT LEWIS COLLEGE

Legislative Council

Report To The

Colorado General Assembly

Research Publication No. 167
March, 1971

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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
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March 26, 1971

To Members of the Forty-eighth General Assembly:

On November 20, 1970, the Legislative Council authorized the appointment of a committee to study Indian enrollment problems at Fort Lewis College. The report of this committee, including a suggested bill to revise the Colorado statutes relating to Fort Lewis, is submitted herewith.

Because the committee was not appointed until late in the year, the Legislative Council on December 18 agreed to accept the final report for transmission to the General Assembly after the beginning of the 1971 legislative session.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL:ar

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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
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March 25, 1971

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Your committee appointed to study Indian enrollment problems at Fort Lewis College submits the accompanying report, including proposed legislation to revise the Colorado statutes relating to Fort Lewis College.

The committee sought the opinion of the Attorney General on several of the legal questions involved in the study. The reply (Opinion No. 71-4562) was issued by the Attorney General on March 18, 1971, and is included in this report as Appendix G.

Respectfully submitted,

/s/ Representative Clarence Quinlan
Chairman
Committee on Indian Enrollment
Problems

CQ:ar

IV/v5

FOREWORD

The Legislative Council at its meeting on November 20th authorized the appointment of a committee to study Indian enrollment problems at Fort Lewis College. The members of the committee were:

Representative Clarence Quinlan, Chairman
Senator Allen Dines
Senator Dan Noble
Representative Ted Bryant
Representative Roy Wells

Valuable assistance was given to the committee by President Rexer Berndt of Fort Lewis College and members of his staff; Mr. John Bush, Resident Counsel, and Mr. Chuck Terrell, Secretary, State Board of Agriculture; Dr. Frank Abbott, Executive Director, and Mrs. Betty Miller, Assistant to the Director, Commission on Higher Education; Mr. Art Gajarsa and Mr. William Benham, U.S. Bureau of Indian Affairs; and the Indian students and others who appeared at the committee's initial meeting on December 9, 1970, to present their point of view.

Primary responsibility for preparation of this report was assigned to Janet Wilson of the Legislative Council staff. She was assisted by Joyce Emerson, research assistant.

March 26, 1971

Lyle C. Kyle
Director

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FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

The Committee on Indian Enrollment Problems was appointed by the Legislative Council late in 1970 because the state's enrollment and tuition policies for American Indian students at Fort Lewis College had resulted in a financial and legal dilemma for which legislative guidance was sought. Actions taken by the State Board of Agriculture and the college administration to deal with the situation had aroused opposition among Fort Lewis Indian students and Indian organizations across the country.

The committee found that the present state law, apparently requiring tuition-free admission of all qualified Indian students, including non-residents, was on a collision course with the budgetary limitations set for the college by the General Assembly, and the rapidly increasing Indian enrollments at Fort Lewis were bringing the problem sharply into focus.

The committee felt that the state could not deal adequately with the financial question until the legal uncertainties about the state's obligation had been resolved. Therefore a number of questions were submitted to the Attorney General for a legal opinion. The answers to these questions have now been received, and the committee is submitting its report and a recommended bill for consideration by the General Assembly.

Moral Obligation of the State

The committee strongly believes that the state of Colorado has a moral obligation to continue to provide quality education for a sizable number of American Indian students at Fort Lewis College. This is in keeping with the heritage of the college and the conditions of the grant of the original Fort Lewis site at Hesperus. A fine program of Indian education has been developed at Fort Lewis and every effort should be made to continue and improve this program.

Legal Obligation of the State

On the subject of tuition, however, the Attorney General has concluded that the state of Colorado has no federally imposed legal obligation to provide tuition-free education for American Indian students now that Fort Lewis College is located in Durango and not on the site of the original land grant at Hesperus. In fact, the present state law raises federal and state constitutional questions, in that it singles out Indian students as a special

group entitled to free tuition solely on the basis of race without any reference to financial need. (See Appendix G for the Attorney General's opinion of March 18, 1971.)

House Bill No. 1452

It appears that the General Assembly is free to amend the state's statutes on Fort Lewis College to give the state more flexibility in the granting of tuition waivers for Indian students. House Bill No. 1452, included herein, represents an attempt to reach a middle ground insofar as the state's legal obligation is concerned, while emphasizing continuation of the special program of Indian education at the college. The committee recommends the passage of H.B. No. 1452 at this session of the General Assembly.

Declaration of Legislative Policy

House Bill No. 1452 firmly declares that the state has a moral obligation to provide special educational opportunities for Indian students at Fort Lewis and pledges that the state will make every effort to continue and improve the outstanding Indian education program now in existence there. The bill further declares that the state will pursue all possible sources of outside funding for program development and student aid for the Indian education program and will assure continuity in the program for all currently enrolled Indian students.

Tuition Policies -- Colorado and Non-resident Indians

The committee believes that the state of Colorado should continue to be legally bound to provide tuition waivers at Fort Lewis for Colorado Indian students who cannot otherwise pay tuition. This policy is stated in the proposed bill.

Students able to pay tuition would be permitted to do so and there would no longer be the possibility that Indian students tendering tuition could be turned away merely because the college had run out of funds for tuition waivers.

Non-resident Indian students would be eligible for admission and for tuition waivers on the same basis as all other non-residents. There would no longer be any possibility that the state of Colorado could be considered legally liable for the tuition-free education of all Indian students from throughout the nation, regardless of financial need or non-resident status. Thus the bill would place the state in a better position to

approach the federal government, other states, and private sources of funding for student scholarships and financial assistance to improve and expand the Indian education program.

It is important to note, however, that non-resident Indian students would still be admitted to the college and many would still be eligible for student assistance because of their financial status.

Next Steps -- Seeking Outside Sources of Funding

The committee recommends that the state undertake to seek financial assistance from outside sources, particularly the federal government. To this end it is suggested that members of the General Assembly explore the possibilities with the Colorado congressional delegation and representatives of the Bureau of Indian Affairs and the U.S. Office of Education.

The committee also recommends the continuation of the study for the purpose of following through with the fund-seeking project and considering other ways of fulfilling the additional pledges contained in the legislative declaration of House Bill No. 1452.

LDO NO. 71 1205/1 First Regular Session HOUSE BILL NO. 1452

Forty-eighth General Assembly

STATE OF COLORADO STATE AFFAIRS

BY REPRESENTATIVES Bryant, Quinlan, and Wells;
also SENATORS Dines and Noble.

A BILL FOR AN ACT

RELATING TO FORT LEWIS COLLEGE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 14 of chapter 124, Colorado Revised Statutes 1963, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 14

FORT LEWIS COLLEGE

124-14-1. Legislative declaration. The general assembly hereby finds, determines, and declares: That Fort Lewis college had its beginnings on land originally set aside by the federal government as an Indian school, and that this heritage and the traditional role of the college in relation to the American Indian have left the state of Colorado with a moral obligation to provide special educational opportunities for Indian students; that a sizeable Indian student population on the campus of Fort Lewis college is desirable; that the state will make every effort to continue and improve the outstanding Indian education program now in existence at Fort Lewis college; that although this article is intended to establish the obligation of the state of Colorado in this regard, the state intends to pursue all other possible sources of funding for program development and student

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

aid for the Indian education program; and that the state further intends to make every effort to assure continuity in the Fort Lewis college program for all qualified Indian students who were enrolled and in good standing prior to the effective date of this article.

124-14-2. College established - objects. A college is hereby established to be known by the name and style of "Fort Lewis college", to be located at Durango, Colorado, to afford a curriculum in the sciences, arts, business, education, and vocational education.

124-14-3. Governing board - general power. The governing board of Fort Lewis college shall be the state board of agriculture which shall have general supervision of the college and plenary power to enact rules and regulations for the governing of the college.

124-14-4. Governing board - powers. (1) (a) In addition to those powers conferred elsewhere in this article, the state board of agriculture shall have the power to:

(b) Appoint a president of Fort Lewis college who shall hold his office until removed by the board, or until he shall resign the same;

(c) Appoint such other executive officers of the college as may be required;

(d) Appoint such faculty and employees as the necessities of the college demand; and

(e) Determine the compensation to be paid to the president, executive officers, faculty, and professional staff.

124-14-5. Tuition fees - Indians. (1) The state board of agriculture shall fix tuition, in accordance with the level of

appropriations set by the general assembly for the college, subject to the restriction that all qualified Indian pupils whose domicile lies within the geographic boundaries of the state of Colorado, who qualify for in-state tuition under article 18 of this chapter, and who are not otherwise able to pay tuition, shall at all times be admitted to such school free of charge for tuition and on terms of equality with other pupils.

(2) Special programs may also be offered to assist Indian pupils to prepare for, begin, or continue their college education at Fort Lewis college. Indian pupils whose domicile lies within the geographic boundaries of the state of Colorado, who qualify for in-state tuition under article 18 of this chapter, and who are not otherwise able to pay tuition, shall not be charged tuition for such programs. The size of any special programs offered pursuant to this subsection (2) shall be limited by the facilities and revenues available and by the level of appropriations set therefor by the general assembly. Indian pupils whose domicile lies within the geographic boundaries of the state of Colorado shall have preference over other pupils for admission to such programs.

124-14-6. Donations - power to invest. All donations of money, securities, or other property of whatever kind and wherever situated made to Fort Lewis college shall be held by the state board of agriculture for the use and benefit of Fort Lewis college, to be expended subject to appropriation by the general assembly or invested in such securities as are permitted for private trustees and similar fiduciaries under the law of the state of Colorado.

SECTION 2. Article 11 of chapter 124, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

124-11-15. Hesperus account created. The proceeds of or income from the property formerly known as the "Fort Lewis school", granted by the United States to the state of Colorado, pursuant to an act of congress approved April 4, 1910 (36 Stat. 274) as modified by an act of congress approved May 18, 1916 (39 Stat. 128), shall constitute a special account, which shall be known as the "Hesperus account". The income from said property and from the Hesperus account shall be applied to such public purpose as may be determined by the state board of agriculture, subject to appropriation by the general assembly.

124-11-16. Development of natural resources. The state board of land commissioners is hereby authorized and directed prudently to develop such coal measures, mineral deposits, and oil structures by lease or otherwise as may be situate on lands described in section 124-11-15, but such development shall not unreasonably interfere with the use of such land as may be directed from time to time by the state board of agriculture. Applications for leases of the coal measures, mineral deposits, and oil structures shall be made to the state board of land commissioners, which board may execute such leases in the manner required by law. Rental, royalties, and income therefrom shall be deposited with the state treasurer and credited to the special account established by section 124-11-15.

124-11-17. Power to invest. The state board of agriculture shall have the power to direct the investment of funds held by

the state treasurer pursuant to section 124-11-15 in such securities as are permitted for private trustees and similar fiduciaries under the law of the state of Colorado.

SECTION 3. Repeal. 124-18-5, Colorado Revised Statutes 1963, is repealed.

SECTION 4. Effective date. This act shall take effect July 1, 1971.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

INDIAN ENROLLMENTS AND TUITION WAIVERS AT FORT LEWIS COLLEGE

Introduction

Fort Lewis College, in Durango, Colorado, is a four-year degree-granting state-supported institution of higher learning under the governance of the State Board of Agriculture. Located in the Four-Corners Region of Colorado, Utah, Arizona, and New Mexico, the college is near seven major Indian reservations and easily draws Indian students from throughout the region. Fort Lewis' longstanding tradition and substantial reputation in Indian education is now attracting Indians from other parts of the country as well. Over 40 different tribes are represented in the student body.

Throughout its history, Fort Lewis has maintained a policy of admitting Indian students without payment of tuition. Since the number of Indians resident in the state of Colorado is relatively small (only the Southern Utes and the Mountain Utes have reservations inside the state), tuition waivers at Fort Lewis have always been made available to non-resident as well as to resident Indians. The legal and historical developments which led to the granting of Indian tuition waivers at Fort Lewis are discussed below.

The subject of Indian enrollments and tuition waivers at Fort Lewis comes before the General Assembly for discussion now primarily because the Fort Lewis administration -- for reasons enumerated below --- placed a limitation on the number of tuition waivers available to Indians in the fall of 1970. Indian applicants and others, protesting that the new policy was in violation of federal and state law, demanded a return to the previous unrestricted policy. The college administration turned to the General Assembly for guidance.

Anxious to learn more about the circumstances and hoping to arrive at an equitable resolution of the controversy, the Legislative Council, in late November, authorized the appointment of a small committee to study the problem. The committee, in this report to the General Assembly, has attempted to describe the background and discuss some of the alternatives which might be available under various interpretations of the law.

Legal and Historical Background of the Gra[illegible] and the Condition

The Original Site

Until 1956, the Fort Lewis school was located at what is known as the Hesperus site, about fourteen miles west of Durango in La Plata County. In 1956 the school -- at that time a two-year college -- was moved into Durango. The Hesperus site has remained under state control as an agricultural experiment station.

It is the history of the Hesperus site, and the conditions under which it was accepted by the state, which established Fort Lewis' policy of free tuition for Indians. One of the legal questions to be resolved is whether the federally imposed conditions applicable to the school on the original site must be extended to the school in Durango.

Early history of the Fort Lewis Grant. In 1882, the Fort Lewis Military Reservation, which included the Hesperus site, was set aside by the federal government for an Indian Reservation School. Fourteen years later, in 1896, all but 6,318 acres was released for disposition and returned to the public domain. The remaining 6,318 acres continued as federally-owned Indian school land for another fifteen years. The school apparently served as many as 400 pupils at one time but the number dropped off, and only 34 pupils were in attendance during the 1909 school term.

In December of 1908 the U. S. Commissioner of Indian Affairs reported to Congress that the school was no longer of value to the Indian service and proposed that the property be transferred from federal to state control.

In April of 1910, the Congress of the United States enacted the grant which was subsequently accepted by the State of Colorado. It was a condition of the grant that the lands and buildings be held and maintained by the state as an institution of learning, and that Indian pupils at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils. (See Appendix A for the language of the congressional grant.)

Governor John F. Shafroth and the Eighteenth General Assembly took the necessary steps to accept the grant in January, 1911. The state agreed to the conditions imposed, including the requirement that Indian pupils at all times be admitted to the school tuition-free and on terms of equality with white pupils. (See Appendix B for the executive order accepting the grant.)

Relationship between Fort Lewis Grant and Grand Junction Grant. The Fort Lewis school lands were not the only lands granted to Colorado in April, 1910. There was also an Indian school at Grand Junction which was included in the same section (Sec. 5) of the act. The Grand Junction school was granted and accepted upon the same conditions as the Fort Lewis school, i.e., that the land and buildings be held and maintained by the state as an institution of learning, and that Indian pupils at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils. (See Appendix A.)

Modification of conditions of grants. The Grand Junction Grant is significant in tracing the history of the Fort Lewis Grant because both were affected by a 1916 provision enacted by Congress permitting the State of Colorado to use the property for the care of the insane, as an agricultural experiment station, or for some other public purpose in lieu of the originally designated educational use. Under the 1916 act the Indian admission requirement was applicable to the newly designated purpose, i.e., Indians must always be admitted to such other institutions free of charge and upon an equality with white persons. (See Appendix C for the language of the 1916 modification.)

This modification apparently was sought in connection with the Grand Junction Grant, which the General Assembly did in 1919 transfer over for use as part of the State Home and Training School. (See Appendix D for the Colorado statutes relating to this transfer.) The 1916 act, nevertheless, applied equally to Fort Lewis, since it too was contained in the original section to which the modification was directed. The Hesperus site could be utilized by the state for the care of the insane, as an agricultural experiment station, or for some other public purpose authorized by the legislature. The state did not choose to abandon the educational use of the Hesperus property at the time, however, and did not in fact do so until 1956.

Establishment and development of the Fort Lewis School. The General Assembly, in accepting the grant, established at the Fort Lewis School a school of Agriculture, Mechanic Arts and Household Arts to be a part of the agricultural college system of the state, controlled and managed by the State Board of Agriculture under the same laws, rules, and regulations as the Agricultural College at Fort Collins. The Fort Lewis school was considered a branch of the college at Fort Collins until 1948, when the State Board of Agriculture designated it an independent institution.

The school began operation under state auspices in 1911 with a six-month "short course" in agriculture at the high school level. This was subsequently replaced by a program extending through the longer school year. High school level work was not

completely discontinued until 1934, but beginning in 1927-28, the school also enrolled students for work at the collegiate level. As the curriculum became exclusively post high school, the institution developed into a two-year college and remained a relatively small school during the years at the Hesperus site. Fall enrollments were commonly about 100 to 125, except for a jump to 200 and over following World War II.

Apparently Indian enrollments were insignificant throughout this period but there is no evidence that Indians were ever denied tuition waivers or equality with white pupils. Indications are that the conditions of the grant were honored for the full tenure of the school on the Hesperus site.

It is interesting to note that the low Indian enrollments at Hesperus were in keeping with what had been expected when the grant was accepted. The following excerpt from a Durango newspaper of the day indicates that it was not felt that Indian enrollments would be a problem:

> The federal act stipulates that Indians may be admitted to the school and receive free instruction, but as there are no Indians within many miles of the reservation this becomes an obligation of no consequence. (Durango Morning Daily Democrat, January 28, 1911, p. 4.)

The Fort Lewis school endowment fund. The General Assembly provided in 1925 that all rentals and royalties from leases of coal, oil and gas, and other minerals on the Hesperus property would go into a permanent fund for the Fort Lewis school. This fund was called the "Fort Lewis school endowment fund." The permanent endowment fund was to be invested, with the income going to the use and benefit of the Fort Lewis school.

The statutory provision for this fund and the use of the income therefrom for Fort Lewis has been retained and the procedure is still applicable, even though the Fort Lewis campus is no longer located on the Hesperus site.

Subsequent use of the original site. After the school was moved to Durango, there were proposals for use of the old campus for other public purposes. One such proposal was to establish a youth center on the site for borderline delinquent and disturbed children. A legislative committee asked the Attorney General in 1961 what obligation the state would have to the Indians if such a center were established. The Attorney General, interpreting the 1910 and 1916 acts as applied to Fort Lewis, stated:

> ...the word "equality" means that there shall be no discrimination either for or against and does not mean in equal numbers. As used in the statute

> it should be given the same meaning as when it is used to refer to the constitutional provision of equal protection of the laws. In this regard the word means that all persons in like circumstances and under like conditions must be treated alike both as to privileges conferred and liabilities or burdens imposed....Thus the State's obligations to the Indians under the aforementioned Acts of Congress would be fulfilled if Indians are admitted to the proposed center free of charge in the same manner and on the same basis as persons of other races, i.e., that Indians must not be refused admittance because of their race but need not be granted admission in equal numbers to those of other races. (A.G. Opin. No. 61-3550.)

The proposed youth center never reached fruition, however, and the property at Hesperus has been continued under the auspices of the State Board of Agriculture as the San Juan Basin Branch Experiment Station.

Since the 1916 act specifically mentioned agricultural experiment stations as one possible use for the property, it could be argued that, so long as the state admits Indians to the experiment station free of charge and upon an equality with white persons in accordance with the 1916 act and the above-cited Attorney General's opinion, it continues to meet the federally imposed conditions of the grant as modified.

The Move to Durango

The Fort Lewis school was moved to a new campus in Durango in 1956, pursuant to action of the General Assembly providing that the new facilities were to be used only for purposes of the Fort Lewis school at Hesperus and were to be managed and controlled by the State Board of Agriculture in the same manner as the buildings of the school at Hesperus. (See Appendix E for the full text of Article 14 of Chapter 124, C.R.S. 1963, as amended, the current statute on Fort Lewis College.)

At the time of the move, the legislature took no action to repeal or amend the original state-enacted proviso that Indian pupils must at all times be admitted to Fort Lewis tuition-free and on terms of equality with white pupils. Likewise, no action was taken to revise the Indian tuition waiver policy when the school became a four-year college in 1962. Furthermore, the Fort Lewis school endowment fund has been retained and the revenues from the property at Hesperus, some $3,000 to $4,000 per year, continue to be included as receipts in the budget of Fort Lewis College even though the campus is now in Durango.

The circumstances of the move seem to support the statement made in a Self Survey Report submitted in June, 1957 by Fort Lewis as part of its application for accreditation by the North Central Association, that "it is the intention of the State of Colorado to continue the tuition-free status of the Indian students." Still, there is a question whether the continuation of the Indian tuition waivers on the Durango campus is a federal requirement or just a policy the state has chosen to follow.

It may be that this was a voluntary state policy decision totally independent of any legal obligation of the state under the land grant for the Hesperus site. If this is the case, then it would be within the realm of possibility for the state to voluntarily alter the policy at Durango by appropriate amendments to state laws, without violating the conditions of the federal grant or affecting the state's title to the Hesperus property. The handling of the Grand Junction Grant pursuant to the terms of the 1916 federal act would seem to be precedent for designating the changed public purpose for the property at Hesperus and applying the income from the property and the condition for free Indian admission only to the new use, i.e., the agricultural experiment station.

Thus, even if ultimately the Indian tuition waiver policy is continued at Durango, the state may very well be in a stronger position than has generally been assumed vis a vis the federal government and other states with Indian students attending Fort Lewis. A wider range of alternatives available to the state, including the possibility of discontinuing the special state-financed Indian tuition waivers altogether, should strengthen our bargaining position in requesting financial assistance from these other sources.

Background Preceding 1970 Change in Policy

As impetus developed to move the Fort Lewis campus into Durango, increase the size of the school, expand the curriculum, and become an accredited four-year degree-granting institution, college administrators and supporters began to capitalize on the school's unique role in Indian education. The potential for special programs involving Indian students and emphasizing Indian cultures began to be considered a major asset in the college program, and it became apparent that the administration was particularly anxious to increase the enrollment of Indian students along with the total enrollment at the school.

The 1957 Self Survey for NCA accreditation, for example, noting that "the education of the Indian is an exciting educational task of great anthropologic significance," indicated active

interest in increasing Indian enrollments. A 1958 Supplement to the Survey added that "the historical and continuing presence of the Indian creates a demand for a broad research program in archeology and in anthropology" and that if the college could achieve NCA accreditation, a sizable number of Navajo students could be expected.

In a 1962 publication describing and promoting the Fort Lewis trimester year-round educational system, the following statement was made:

> Fort Lewis is already playing a major role in Indian education in the Southwest since the College, by law, must accept qualified Indian students tuition-free and without discrimination. Because of added emphasis on education by all of the Indian tribes, higher education must play an increasingly greater role in education of the American Indian. In a sense it would be discrimination if a senior college were not provided near the reservations.

It seems obvious that in these first few years on the Durango campus the interest in expanding and elevating the school was foremost, and little thought was given to the possibility that increased Indian enrollments free of tuition might ultimately lead to a financial squeeze for the state.

It also appears that, from the time of the move, the State Board of Agriculture and the college administration thought of the state policy for Indian tuition waivers on the Durango campus as a federally-imposed condition beyond the control of the state to change. The 1916 federal act permitting a change of use for the Hesperus site was apparently forgotten or ignored, and it was generally assumed that there was no way (short of new federal action) that the state could free itself of the obligation to grant tuition waivers for all Indian students on the Durango campus -- even if state policymakers wanted to.

A 1953 Attorney General's letter, written in response to early questions about moving to Durango, contributed to the commonly held notion that no change in conditions could be effected by the state alone. The Attorney General stated unequivocally that:

> ...If the purpose of the school is changed from that laid down in the original congressional grant, it is my opinion that the lands will revert to the federal government and will be lost to the State of Colorado. (Letter to the Secretary of the State Board of Agriculture, April 17, 1953.)

There is no indication that the Attorney General at the time of this letter took into consideration the 1916 amendment to the 1910 federal act.

Even though there had been a de facto change in use which was in keeping with the 1916 congressional listing of permissible public purposes for the Hesperus property, apparently no thought was given to an official statutory redesignation of use by the state legislature to free the state from the possibility that the grant might be forfeited if policies on the Durango campus were changed.

Awareness of Developing Problem

At any rate, it being assumed that the state had no choice but to admit Indian pupils at all times, tuition-free and on terms of equality with white pupils, on the Durango campus, college officials began to become aware of the need to establish some kind of outer limits on the state's obligation and to consider possible sources of outside financial help as Indian enrollments began creeping up. By 1965, there was evidence of concern over the future financial implications of the state's policy of free tuition for all Indian students.

Contacts with U. S. Bureau of Indian Affairs. Commissioner Nash of the Bureau of Indian Affairs visited the Fort Lewis campus in June, 1965, and John F. Reed, then President of Fort Lewis College, wrote to him in July describing the Indian education program and the state's financial problems in connection therewith:

> ...First, it should be made clear that there are really two aspects of our interest in the education of Indians. One of them is the program which you saw in operation when you were on the campus and which is a sub-collegiate program designed to help provide Instructional Aides of the Bureau of Indian Affairs with the opportunity to improve themselves and, therefore, to improve their services to the Bureau.
>
> The other aspect of our interest is in the regularly-matriculated Indians who come to the college for a bona fide collegiate educational experience. This latter group represents about ten per cent of our total enrollment and is made up of some very fine young men and women with whom we are both happy and proud to work. The number of Indian youth at Fort Lewis College has not exceeded 100 at any given time, but with the anticipated increase in our enrollment, if the ten per cent figure above-mentioned remains valid, we will perhaps have as many as 200 Indians in our institution on or before 1971.

The first group mentioned, i.e., the Aides from the Bureau of Indian Affairs, presents no financial problems to the institution, since each of the students in this program pays his own way on an established fee schedule, which fees are not included as exemptions under the statute that specified tuition-free privileges for our regular Indian students; the other group, i.e., our regular Indian students who are degree-bound, do have their tuition waived and, therefore, each of them represents dollars which we do not receive for the operation of the college.

In short, what we are trying to explain is that we collect no tuition from our regular Indian students, and since we are permitted to classify all of our Indian students as residents of the state of Colorado for tuition purposes, we actually waive, at the present time, one hundred dollars per term per Indian student. Obviously one hundred Indian students at Fort Lewis College incur waivers in the amount of $10,000 per term, or $30,000 per year, since we operate on a three term (trimester) system, a fact that creates questions that are not easy for us to explain. There seems to be no doubt, however, that the state of Colorado agreed precisely to these terms with the federal government at the time that 6,000 acres or more of land near the old campus at Hesperus were transferred from federal to state ownership. The problem really arises because of the value of the waivers which are likely to be interpreted as gratuities for which there is no possibility of reimbursement. In other words, it seems to some of the voters in Colorado that our state is assuming a responsibility for the education of Indians, most of whom come from outside Colorado, quite in excess of the amount of money originally anticipated when the transfer of land was made some fifty or more years ago.

The historical facts of the matter are not immediately evident, but it is probable that the intent at the time these arrangements were made was for tuition-free privileges to be extended to a very limited number of local Indian students in what was then at most a high school program, but now the number of Indian students who can qualify under the letter of the law is numbered in the hundreds or even thousands of Indians from the entire United States. In fact, the college is beginning to become well-known from coast to coast and last year we had our first complement of Eskimos here at the college

from Alaska. Within the year there were representatives of more than thirty pueblos or tribes in our regular student body.

We consider it a great privilege to be involved as we are in the education of the American Indian, and we hope that we are not shirking any responsibility in this challenging venture, but if there is any way in which any kind of relief can be provided for us budgetarily in making up some of the "deficit" that seems to be incurred as the result of the increasing number of Indian students, we earnestly solicit your advice about its source and the manner in which we may apply for it.

I would like to suggest that the magnitude of the problem, as we see it, is such that it may be wise, if funds can be found, to do some research concerning the possibilities of Fort Lewis College expanding its educational program for the American Indian. Such a project could be carried out with limited funds, if such are available. We would recommend that the work be done by someone from outside our institution, so that the results would be objective and the answers unbiased. We would strive for a plan that will enable us adequately to encompass the total spectrum of our opportunities and responsibilities. We feel that our several years' experience in Indian education at this college could form a firm basis for such a study and, perhaps, represent a projection that will enable all of us to know what may be expected at this college under the provisions for tuition-free privileges for Indian students in the years to come in the context of what the Bureau plans and what other institutions will be doing. Can you advise about this idea? ... (Emphasis added.)

About a year later, Commissioner Bennett of the Bureau of Indian Affairs visited the campus and indicated that he and his staff would look into the problem. An opinion from the Office of the Solicitor, Department of the Interior, was issued on November 1, 1966. The Solicitor had been asked whether the requirements for free tuition could, in effect, be waived for out-of-state Indian students whose tuition expenses would then be covered by grants from the B.I.A. Without citing or interpreting the 1916 amendment to the 1910 congressional act or considering the effect of unilateral state action pursuant to the amendment, the Solicitor concluded that the federal grant had been made and accepted "with the concomitant and unconditioned obligation to provide tuition-free education to Indians, without limitation on numbers or place of residence." He continued:

> In my view, congressional action would ... be needed to remove the requirements of the 1909 and 1910 acts and to authorize appropriation of funds for tuition grants for Indian pupils at Fort Lewis College or for some alternative form of federal subsidy for the college. We see no possibility of administrative waiver of the statutory provision, however onerous it may be and however desirable it may be to provide relief from its requirements. (See Appendix F for full text of Solicitor's opinion.)

The Bureau of Indian Affairs did, however, lend its support to the Fort Lewis application for funds for Indian education under Title III of the Higher Education Act of 1965, Strengthening Developing Institutions.

Official definition of "American Indian". In June of 1966 the State Board of Agriculture officially adopted a working definition of the term "Indian" for use in determining eligibility for Indian tuition waivers at Fort Lewis. The action was taken at the urging of the Director of Admissions at Fort Lewis, who had been receiving more and more applications for tuition-free admission as American Indians. This was another indication of growing concern about increased Indian enrollments and the need for formalization of requirements for tuition waivers.

The official definition adopted by the Board is quoted below. It was excerpted from the United States Code, 1964 Edition, Volume VI, Title 25, Chapter 14, Section 479, Page 4897:

> The term "Indian" [as used in sections 461, 462, 463, 464, 465, 466, 470, 471, 473, 475, 476, 478, and 479 of this title] shall include all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction and all persons who are descendants of such members who were, on June 1, 1934, residing within the boundaries of any Indian reservation; and shall further include all other persons of one-half or more Indian blood.
>
> [For purposes of said sections] Eskimos and other aboriginal peoples of Alaska shall be considered Indians.
>
> The term "tribe" [wherever used in said sections] shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.
>
> The words "adult Indians" [wherever used in said sections] shall be construed to refer to Indians who have attained the age of 21 years.

No attempt was made to limit tuition waivers to Colorado Indians. An Indian who meets the above definition is considered eligible to apply no matter where he resides.

Request from Commission on Higher Education

The Colorado Commission on Higher Education, established by the General Assembly in 1965, made a request regarding Fort Lewis College in its report, "Strengthening Higher Education in Colorado," issued in November, 1966. After stating that Fort Lewis "has a long-standing mission in the education of Indian Americans and should be encouraged and aided to develop a distinctive program for these students," the Commission asked that the State Board of Agriculture "initiate inquiries with appropriate state and federal agencies looking either to modifications of law to provide proper reimbursement for the education of non-resident Indian students or to permit strict limitation of non-resident Indian students" at Fort Lewis.

Pursuant to this request, the State Board of Agriculture asked the Attorney General's office for assistance in determining the legal requirements of the state and federal statutes regarding the admission of Indian students to Fort Lewis College.

The Attorney General replied on February 7, 1967. The opinion merely reiterated the Colorado statutes and appended a copy of the executive order issued by Governor Shafroth accepting the grant of the Hesperus property. Without noting the possible effect of the 1916 congressional amendment, the Attorney General stated that "Indian pupils shall at all times be admitted to Fort Lewis College free of charge for tuition and on terms of equality with white pupils regardless of their residence." The opinion contained no interpretation of the quoted statutory language.

Shortly thereafter, in a letter to Dr. Frank Abbott, Executive Director of the Commission, Mr. Charles Terrell, Secretary of the State Board of Agriculture, reported that both the Attorney General's response and the text of Governor Shafroth's executive order "confirm the present procedure being followed at Fort Lewis College." He went on to state his conclusion that any change in law would require action by both the Colorado General Assembly and by Congress. He warned that a change in federal law might affect institutions and states other than Fort Lewis College and the state of Colorado; hence, he said, "the State Board of Agriculture is reluctant to proceed toward a request that Congress amend its laws relating to this matter. This appears to more appropriately be a matter for the Commission on Higher Education to undertake." (Emphasis added.) In conclusion Mr. Terrell said that under the circumstances, "the State Board of Agriculture is without authority to limit the enrollment of Indian students by imposing tuition charges or by

ordering other restrictions than those imposed on all other stuents."

This letter was followed by a request from the Commission on Higher Education for information on Indian enrollments, residential status of Indian students, and amounts of Indian tuition waivers since 1962. The information was supplied within a short time and is included in this report as Tables I and II.

Decision to Limit Indian Tuition Waivers in 1970

The number of Indian students at Fort Lewis has continued to increase, as shown in Table III. By 1969 there were 192 Indians enrolled, slightly over ten percent of the total student body. The number from other states -- especially New Mexico, Arizona, and Alaska -- still exceeds by far the number from Colorado (Table IV).

Current Programs for Indian Students

Dr. Rexer Berndt, now President of Fort Lewis College, has pointed out that the school's successful Indian programs tend to draw more Indian students each year and have resulted in an improved retention rate. Dr. Berndt submitted the following description of programs currently in operation at Fort Lewis for the Indian students:

The Intercultural Program: Funded under Title III of the Higher Education Act of 1965. Currently in its fourth year of operation and operating under a budget of $100,000 for the fiscal year 1970-1971. The primary purpose of the program is to help bilingual and bicultural students enter into and progress through college. The following programs are offered on a voluntary basis:

English as a Second Language
Mathematics
Counseling
Tutoring
Pre-College Orientation

Participation in the programs and services has grown from 125 students in 1967 to 400 students in 1970. This includes pre-college students.

The college recently submitted a multi-year grant proposal which, if funded, will allow the program to operate until 1974.

Table I

FORT LEWIS COLLEGE
Office of Admissions and Records
Distribution of American Indian Enrollments by
Colorado Counties and States, and by Trimesters 1962-67
Prepared March 10, 1967

STATES	1962-63			1963-64			1964-65			1965-66			1966-67	
	F	W	S	F	W	S	F	W	S	F	W	S	F	W
Colorado (By County)														
Denver										2	1			
Dolores				1	1									
La Plata		1	1	12	4	1	6	5	4	10	10	6	8	5
Montezuma	1	1	2	4	2	3	3	3	3	5	5	2	3	1
Total Colorado	1	2	3	17	7	4	9	8	7	17	16	7	11	6
Alaska				1			7	2	8	31	30	9	23	17
Arizona	9	7	2	15	13	12	17	15	5	21	12	8	24	15
California	1	1	1	1	1	1	0	1	2	2	1	1	0	0
Idaho							10	9	3	5	3	2	3	3
Kansas							1	1		1				
Nebraska							1							
New Mexico	47	42	25	41	39	23	41	35	25	51	56	37	57	34
Nevada													1	2
North Dakota														1

Table I (Continued)

STATES	1962-63			1963-64			1964-65			1965-66			1966-67	
	F	W	S	F	W	S	F	W	S	F	W	S	F	W
Oklahoma		1	0	1	1	2	3	2		1	1	0	0	0
South Dakota				1	1		1	1						
Texas							1	1						
Utah				2	2	2	2	1	2	0	1	1	3	2
Washington	—	—	—	—	1	1	2	2	1	2	2	0	2	2
TOTAL	58	53	31	79	65	45	95	78	53	131	122	65	124	82

F - Fall Trimester
W - Winter Trimester
S - Spring Trimester

Table II

FORT LEWIS COLLEGE

Summary - Tuition Waivers for Indian Students

	Tuition Waived For Indians	Gross Tution (All Students)	Ratio-Waivers For Indians To Gross Tuition
Academic Year 1962-63	$ 7,755	$121,362	6.39%
Academic Year 1963-64	10,167	184,734	5.50%
Academic Year 1964-65	22,468	302,443	7.43%
Academic Year 1965-66	30,720	378,831	8.11%
Academic Year 1966-67*	31,100	398,575	7.80%

*Estimated

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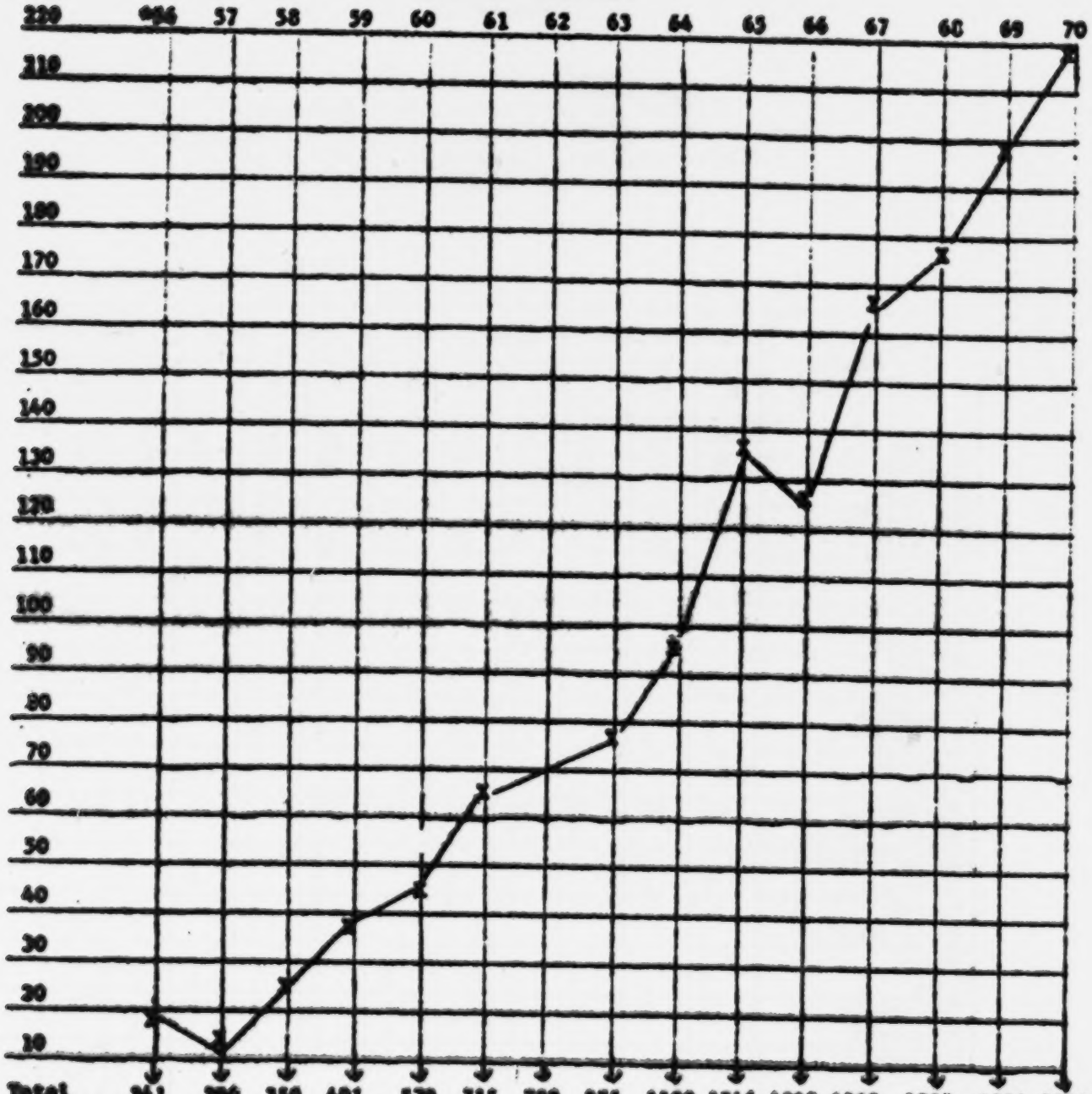
Table III

ANNUAL ENROLLMENTS OF AMERICAN INDIAN STUDENTS - 1956 - 1970

FORT LEWIS COLLEGE



	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
Total College Enrollment	841	896	359	401	579	715	720	975	1108	1346	1399	1550	1723	1851	2070
Total Indian Enrollment	18	9	23	37	46	66	58	79	95	131	124	163	176	192	219 **
% Student Body	7.5	3.1	6.4	9.2	7.9	9.2	8.1	8.1	8.6	9.8	8.9	10.5	10.2	10.3	10.6

* Earlier enrollments

** 205 admitted on tuition waivers; [illegible]

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Table IV

FORT LEWIS COLLEGE
Office of Admissions and Records
Distribution of American Indian Enrollments by States and by Trimesters - 1967 - 1970
Prepared November 10, 1970

STATES	1967 - 1968			1968 - 1969			1969 - 1970			1970 - 1971		
	F	W	S	F	W	S	F	W	S	F	W	S
[illegible]	38	38	14	33	33	14	25	21	8	14	(2)	
[illegible]	29	18	11	34	31	14	38	38	27	30	(1)	
[illegible]			3									
[illegible]		1	1				1	1		2		
Colorado	17	15	5	14	17	6	17	15	12	14	(6)	
Florida							2	2	1	1		
Hawaii							1					
Idaho		1		1	1	1	1	2	1	1	(1)	
[illegible]				1			1	1				
[illegible]												
Maryland	1	1		1	1		1	1	1	1		
[illegible]				1			1					
Montana	3	3		3	2		1	1		4		
Nebraska												
Nevada										1		
[illegible] Mexico	65	59	36	79	63	31	86	71	54	113	(8)	
[illegible] Carolina			1	1								
[illegible] Dakota							4	1				
Oklahoma	4	2		1	1		1		1	2		
[illegible]				3	3		1	2				
South Dakota				1			1	1		7	(1)	
[illegible]												
Utah	3	3	2	1		2	1	1	5	1		
[illegible]	3	2	1	1	1	1	5	5	2	4	(1)	
[illegible]				1	1	1	1	1		1		
[illegible]					1		3	3		1		
Totals	163	139	74	176	155	70	192	167	112	206	* (18)	

*Paid tuition

The Indian Studies Program: A two-year pilot program funded for $40,000 by Ford Foundation. The program is currently in its first year of operation. Its primary purpose is to provide an "Indian-oriented" curriculum for 40 selected first-year students. The goal is to increase the success of the first year student. The instructors are Indian; they also serve as counselors to the students. The following programs are offered:

Seminar on Contemporary Indian Affairs

Indian History and Culture

Indian Art Appreciation

Indian Arts and Crafts

Four Corners Cooperative Educational Planning Program: A 1970-1971 planning program funded for $24,840 under the Division of College Support, H.E.W., to develop cooperative education for Indian students and other minority groups.

A Student-Faculty Relations Program: A 1970-1971 program developed by the Indian students and funded by the Danforth Foundation for $500. The primary purpose of the program is to create better understanding between the college faculty members and the Indian students regarding cultural factors that affect learning and behavior of Indian students on the college campus.

Project TRAIL (Total Resources Applied to Indian Learning): A 1970-1971 planning project, planned in coordination with the Commission on Higher Education and funded under Title I of the Higher Education Act of 1963 for $55,000. The primary purpose of this project is to plan programs and facilities to serve Indian students during the 1970's and 1980's.

Special Problems of Indian Students

Dr. Berndt's description states that one must be cognizant of the fact that American Indian students have a cultural heritage that is non-Western. Their cultural value systems differ considerably from those of the non-Indian systems. General differences are found in concepts related to language, time, competition, family, work, investment, nature, materialism, authority, and religion. The cultural conflicts experienced by the Indian students in the Anglo-oriented college setting are intense and complex. While their problems are classified into three broad categories given below, these classifications are very general and should not be compared to the problems of the non-Indian:

Problems related to communication, due to deficiencies in the use of the English language;

Problems related to personal and social adjustment, due to cultural differences; and

Problems related to limitations in educational background and experience.

Dr. Berndt attributes Fort Lewis' success in Indian education to its individualized approach which takes into account these special problems and emphasizes the advantages of its small size and strategic location for Indian students.

Although admission standards for Indians are nominally the same as for non-Indians (upper two-thirds of the high school graduating class with 15 acceptable secondary school units), Dr. Berndt states that the typical Indian student is not as well prepared academically to pursue a college education. Thus the college provides extra remedial courses in mathematics, reading, and use of the English language and offers extra counseling and a continuous program designed to increase the success factor among Indian students. The costs of these extra services, added to the tuition waivers (which amount to $350 per term for non-resident and $122.50 per term for resident Indian students), make Indian education at Fort Lewis an expensive undertaking.

Fall Term, 1970

Until the fall term of 1970 the number of Indian applicants had never exceeded the number which the college felt it could accept in terms of its budget and its capacity for handling the special needs of Indian students.

During the summer of 1970, however, it became apparent that there would be more Indian applicants for the fall term than the school was prepared to receive. Relying on the expected Indian enrollment pattern of approximately ten percent of the student body and the fact that the budget had been funded on this basis for an Indian enrollment of 200, the administration decided to limit the enrollment to 207 Indian students. According to Dr. Berndt, this limit on Indian enrollment was adopted in the name of manageability and quality education and to prevent a "revolving door" experience for Indian students.

Applications for tuition waivers were received from 248 Indian students. Forty-two of these were placed on a waiting list, but 17 offered to pay tuition and were admitted as tuition-paying students. This made a total Indian enrollment of 224 during the fall term, comprising 10.6 percent of the student body. Twenty-four students remained on the waiting list. It is estimated that a total of 62 eligible Indian students were refused admission or discouraged from seeking admission in the 1970 fall term.

The legality of limiting the number of Indian tuition waivers and of accepting tuition from the 17 Indian students who were willing to pay was immediately brought into question. Indian groups on the campus and across the nation sought a reversal of the new policy and vowed to take the issue to court if necessary.

Even so, plans proceeded for limiting Indian tuition waivers for the winter term to 192, the number incorporated in the budget. Priorities set for accepting the 192 Indians were as follows:

1. All Colorado applicants;

2. All applicants currently enrolled who are proceeding in an academically successful manner;

3. All returning Indians who are in good standing academically;

4. All new applicants who show promise of high academic achievement; and

5. All other eligible applicants.

The quota established for the 1971 spring and summer terms was 100 each, again the budgeted number.

Projections are that 350 Indian students can be expected to seek admission to Fort Lewis on tuition waivers in the fall of 1971; however, the budget for 1971-72 -- prepared before the larger number was anticipated -- contains an estimate of only 221 tuition waivers for Indian students.

In a brief statement of the problem prepared for this committee, Dr. Berndt said:

> Fort Lewis College is now faced with this dilemma: if we continue to admit Indian students in an ever greater proportion of the student body, then we will be unable to give them individual attention and the "back-up" courses that they need. We will have to turn to a "revolving door" philosophy, meaning that the Indian students will have to enter college, take their own chances, and be dismissed rather early in their academic careers if they can't measure up....
>
> On the other hand, if we are to maintain the semblance of a small college in giving individual attention to each student, then Fort Lewis is going to have to carefully select and control the number

of Indian students that it can admit in any given year to be in accord with the faculty and educational resources available. Based upon recent communications with private foundations and recent experiences with special program budgets reduced by the federal government, it would appear that this number would be somewhere between 150 and 200 Indian students to be admitted over the next several years. The college is willing and anxious to handle any assignment given to it in the matter of educating minority or disadvantaged students by the state of Colorado. What we ask is a recognition of increased budget allocations that are necessary if we are to handle great numbers, or clarification of our legal right to select and limit enrollment if we are to absorb the instructional program of such disadvantaged students into our present academic programs.

Legislative Council Committee on Indian Enrollment

In late November of 1970, the Colorado Legislative Council appointed a five-member committee to study the Indian enrollment situation at Fort Lewis. Representative Clarence Quinlan of Antonito was appointed chairman. Other members were: Senators Allen Dines of Denver and Dan Noble of Norwood; and Representatives Ted Bryant of Denver and Roy Wells of Cortez.

The first meeting of the committee was held on December 9, 1970. Dr. Berndt and others from the Fort Lewis staff explained the background of the problem much as it has been outlined above. They welcomed legislative participation in attempts to determine the nature and extent of the state's legal and moral obligations in the matter.

Dr. Berndt stressed his feeling that the ability of the college to provide individualized quality education for Indian students will be seriously impaired if Indian enrollments increase beyond the 200, or ten percent, level. He also emphasized the magnitude of the financial burden on the state if 350 Indian students are admitted next fall without payment of tuition. (The average cost per student at Fort Lewis is about $1,300 per year, he said.)

Figures were presented indicating that the number of Indians eligible to enter college will continue to grow in the next few years. (See Table V for the number of senior Indian students at selected high schools in the region.)

Dr. Berndt suggested that perhaps contact should be made with the Colorado congressional delegation to discuss possible federal solutions. He noted the interstate nature of the problem

Table V

INDIAN STUDENT ENROLLMENT

High School Seniors Eligible to Enter
Fort Lewis College in September 1971
Selected High Schools

	High School	Number of Senior Indians 1966	Number of Senior Indians 1970
New Mexico -	Aztec	5	15
	Farmington	5	12
	Shiprock	67	100
	Gallup Public High School	67	115
Total New Mexico		144	242
Colorado -	Cortez	4	4
Arizona -	Tuba City	52	62
	Kayenta	28	46
	Flagstaff High School	21	28
	Coconino H.S., Flagstaff	Not Operating	16
	Winslow	36	46
	Holbrook	27	40
Total Arizona		164	238
	TOTAL	312	484

September 21, 1970

and mentioned the need for new federal aid sources, including federal "impaction" aid to colleges and universities along the lines of the aid now given public school systems with large numbers of federally-related students under Public Laws 874 and 815.

A question was raised about asking financial help and cooperation from the states of residence of the Indians attending Fort Lewis. It appeared that little help could be expected from other states so long as Colorado is assumed to have an absolute legal obligation to provide Indian tuition waivers out of its own budget.

Establishment of a junior college in Durango, connected with Fort Lewis College and serving the needs of Indians as well as other students, was another of Dr. Berndt's suggestions.

Several other persons, including Indian students, testified during the meeting. The general feeling was that the state had no authority to place a limit on the number of tuition waivers at Fort Lewis, and that the 17 Indian students should not have been charged tuition to enter. It was suggested that possibly the state could make the Indian tuition waivers applicable at any of several colleges and universities in the state in addition to Fort Lewis.

The following petition, containing nearly 300 signatures, was presented to the committee:

> We the undersigned hereby affirm our support of the Indian students who will attend Fort Lewis College in the future. We feel that the ten per cent limit on the number of Indian students who may attend Ft. Lewis tuition free is unjustified. We believe the agreement made by the State of Colorado should be upheld and honored by this State. As President Nixon stated in his speech of July 8, 1970,
>
> > The special relationship between Indians and the Federal government is the result... of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to the vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education...

We feel that the agreement entered into by the State of Colorado is a solemn obligation that should not be broken because of the whims and fancies of some people who refuse to spend the extra few pennies per person needed to honor such an obligation.

We strongly urge you and the committee you serve to look closely at the moral obligation to uphold and maintain the agreement with the Indian people that this state has made.

The committee agreed to ask the Attorney General for an official ruling before taking any further action. An answer was requested prior to the beginning of the winter term in early January. (See Appendix G for a copy of the letter to the Attorney General.)

On December 30, 1970, the committee met again to discuss the problem with various state officials and with representatives from the U. S. Bureau of Indian Affairs and determine what should be done about the January registration.

After considerable discussion, the committee recommended to Fort Lewis College and the State Board of Agriculture that no limitations be placed on the number of Indians to be admitted to the college for the winter term; provided, that the same basic entrance standards be utilized for Indians and others as have been utilized by the college in the past.

The committee also recommended to Fort Lewis College and the State Board of Agriculture the full refunding of tuition paid by Indian students for enrollment during the fall term.

The chairman of the committee was directed to contact the Speaker of the House and the President and Majority Leader of the Senate about reconstituting this committee, including those who are presently members, to function during the legislative session.

The committee asked Fort Lewis College to provide a better breakdown of cost information on the special Indian program compared with the regular program, showing the excess cost per student for the Indian program and the sources of funding.

The committee decided to withdraw its request for an opinion from the Attorney General.

It was agreed that if the recommendation for admission of Indians for the winter term were to result in the need for a supplemental appropriation from the General Assembly, the members of the committee would give their support to the college's request.

The action noted above was primarily to set guidelines for the January registration at Fort Lewis College and to lay the groundwork for continued study of the legal and fiscal alternatives available to the state. Although there was discussion of possible long-term solutions, the committee did not feel it had sufficient information at that time to make any recommendations regarding long-term policies.

The committee discussed the possibility that legal interpretations of Colorado's obligation under the Hesperus grant might be re-explored. If it could be established that the legal obligation is limited, the committee felt, this could lead to a series of other possibilities based on the state's voluntarily providing a special program for a limited number of Indian students -- depending on the funds available from state appropriations and from outside sources -- and also offering free tuition for Indian students admitted subject to the same limitations (e.g., academic qualifications, proportion of non-residents, etc.) as non-Indian students.

The result of the policy adopted for the January registration was that, of 1,925 students enrolled, 195 were Indians who were granted the tuition waiver. Thus there was no confrontation over the question of limitations and the number of tuition waivers was only three above the number the administration had attempted to establish as a limit.

Following the committee's December 30 meeting, Dr. Berndt provided additional figures on the cost of Indian education at Fort Lewis. His figures are included in Table VI.

The committee has continued on an informal basis during the legislative session with the same membership. An Attorney General's opinion was requested and a proposed bill was prepared. (See Appendix G for the Attorney General's opinion; the bill is included at the beginning of this report.)

Since it is the consensus of the committee that there is more to be done in seeking possible sources of funding for the special Indian program at Fort Lewis, the committee has suggested continuation of the study after the legislative session.

Table VI

Fort Lewis College
Analysis of Funds Applicable To Indian Education
1970-71 & 1971-72

General Fund Expenditure Per FTE

	1970-71 Amount Budget	FTE(1)	1971-72 Amount Request	FTE(2)
Instruction	1,409,150	672	1,883,331	804
Library and Museum	221,608	106	319,302	136
General Administration	143,098	68	185,635	79
Student Services	156,079	75	190,501	81
General Institutional	239,542	114	303,409	129
Physical Plant	272,296	130	399,908	171
Student Aid	146,450	70	171,273	73
Capital Outlay	123,235	59	160,000	68
Total General Fund Expenditure	$2,711,458	$1,294	$3,613,359	$1,541

(1) 1970-71 FTE based on 2,096 full time students
(2) 1971-72 FTE based on 2,345 full time students

Cost for 252 FTE Indians 1970-71	$326,088
Estimated Cost for 350 FTE Indians 1971-72	$539,350

Title III Expenditure Per FTE

	1970-71 Amount Budget	FTE	1971-72 Amount Request	FTE
Administration	24,440	97	38,442	110
Instruction	39,092	155	132,117	377
Travel	1,200	5	5,400	15
Classroom Supplies	2,400	10	3,900	11
Stipends - Summer Program	18,100	177	43,792	125
Educational Tours - Summer Program	3,525	33	15,375	44
Special Events	900	4	1,585	5
Indirect Cost	10,543	42	34,240	98
	$ 100,000	$ 523	$ 274,851	$ 785

With the exception of funds budgeted for Educational Tours and Special Events the 1970-71 FTE is based upon 252 full time Indian students. The program provides personal and academic service for the American Indian in English, Mathametics and Counseling.

The special summer program to acquaint prospective American Indian students with college life provided funds for Stipends and Educational Tours for 102 Indians. FTE for these line items is based upon this number of participants.

1971-72 FTE is based on 350 full time Indian Students

Table VI (Continued)

Ford Foundation Grant Per FTE

	1970-71 Amount Budget	FTE	1971-72 Amount Budget	FTE
Instruction	23,760	594	11,880	297
Secretarial	540	14	540	14
Travel & Guest Lecturers	625	16	625	16
Supplies	535	13	535	13
Pre-Term Orientation	480	12	480	12
	$25,940	$649	$14,060	$352

Grant for special educational services for 40 American Indian freshmen.

Subjective Estimate of Personnel Time Devoted To Indian Education

	1970-71	1971-72
President's Office	4,500	6,700
Business Office	2,100	3,100
Accounting	5,300	8,000
Student Services	4,700	7,000
Financial Aids	6,500	9,700
Student Housing	1,100	1,600
Total	$24,200	$36,100

Summary of Funds Applicable To Indian Education

	1970-71	1971-72
State Funds:		
General Fund	326,088	539,350
Personnel Time	24,200	36,100
	350,288	575,450
Federal Funds - Title III	100,000	274,851
Private Funds - Ford Foundation	25,940	14,060
Total	$476,228	$864,361

The above analysis indicates that in 1970-71 one out of every six dollars expended is for the benefit of American Indian students who comprise 11% of the student body.

Appendix A

Section 5 of "An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs. for fulfilling treaty stipulations with various Indian tribes. and for other purposes. for the fiscal year ending June 30. 1911". approved April 4. 1910:

COLORADO.

SEC. 5. There is hereby granted to the State of Colorado, upon the terms and conditions hereinafter named. the property known as the Grand Junction School. including the lands. buildings. and fixtures pertaining to said school: Provided, That said lands and buildings shall be held and maintained by the State of Colorado as an institution of learning, and that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils: Provided further. That this grant shall be effective at any time before July first, nineteen hundred and eleven, if before that date the governor of the State of Colorado files an acceptance thereof with the Secretary of the Interior accepting for said State said property upon the terms and conditions herein prescribed.

For support and education of two hundred Indian pupils at the Indian school at Grand Junction, Colorado, thirty-three thousand four hundred dollars. and pay of superintendent, one thousand six hundred dollars: Provided, That if said school is disposed of as above authorized at any time during the fiscal year of nineteen hundred and eleven the pro rata share only of the appropriation for the maintenance of said school for the portion of the year which the school is maintained by the United States shall be available.

There is hereby granted to the State of Colorado, upon the terms and conditions hereinafter named, the property known as the Fort

Lewis School, including the lands, buildings and fixtures pertaining to said school: Provided, That said lands and buildings shall be held and maintained by the State of Colorado as an institution of learning, and that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils: Provided further, That this grant shall be effective at any time before July first, nineteen hundred and eleven, if before that date the governor of the State of Colorado files an acceptance thereof with the Secretary of the Interior accepting for said State said property upon the terms and conditions herein prescribed: Provided further, That if said property is not accepted by the State of Colorado as hereinbefore provided, the Secretary of the Interior is hereby authorized to dispose of and convey the said property, including the real estate, buildings and fixtures, to the highest bidder for cash at a price not less than the appraised valuation to be fixed by the Secretary of the Interior, the sale to be subject to his approval and under such rules and regulations as he may prescribe; and the Secretary of the Interior is also authorized and directed to sell, or transfer to other government Indian schools, all other property pertaining to the said Fort Lewis School for the disposition of which provision is not otherwise made herein. (Emphasis added.)

36 Stat. 273-274

Appendix B

Excerpts from Executive Records of Governor John Shafroth, Vol. 20, pages 124-125, Colorado State Archives.

EXECUTIVE ORDER

ACCEPTANCE OF THE PORT LEWIS INDIAN SCHOOL.

WHEREAS, by An Act of Congress of the United States of America, passed at the Second Session of the Sixty-first Congress, entitled: "An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs for fulfilling treaty stipulations with various Indian tribes, and for other purposes for the fiscal year ending June 30, 1911", and approved April 4th, 1910, there was granted to the State of Colorado, upon the terms and conditions therein named, the property known as the Fort Lewis School, including the lands, buildings, and fixtures pertaining to said School, and

WHEREAS, it is provided that said lands, buildings and fixtures shall be held and maintained by the State of Colorado as an institution of learning, and that Indian pupils shall at all times be admitted to said school, free of charge for tuition and on terms of equality with white pupils, and

WHEREAS, It is by said Act provided further that said grant shall be effective at any time before July 1, 1911, if before that date the Governor of the State of Colorado files an acceptance thereof with the Secretary of the Interior , accepting for said State said property upon the terms and conditions prescribed; and

WHEREAS, the Eighteenth General Assembly of the Stateof Colorado has passed, and the Governor of the State of Colorado approved An Act which is in words and figures as follows; to-wit:

"AN ACT

ESTABLISHING A SCHOOL OF AGRICULTURE AND MECHANIC ARTS, AT THE FORT LEWIS SCHOOL, IN LA PLATA COUNTY, UNDER THE TERMS, PROVISIONS, GRANTS AND CONDITIONS OF AN ACT PASSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES, ENTITLED: 'AN ACT MAKING APPROPRIATIONS FOR THE CURRENT AND CONTINGENT EXPENSES OF THE BUREAU OF INDIAN AFFAIRS, FOR FULFILLING TREATY STIPULATIONS WITH VARIOUS INDIAN TRIBES AND FOR OTHER PURPOSES, FOR THE FISCAL YEAR ENDING JUNE 30,1911', APPROVED APRIL 4, 1910, AND FOR MAKINGAN APPROPRIATION FOR THE PURPOSE OF ERECTING AND EQUIPPING NEW BUILDINGS, CARRYING ON EXPERIMENTAL WORK ALONG THE LINES OF AGRICULTURE, HORTICULTURE, ANIMAL INDUSTRY, IRRIGATION, DRAINAGE, GOOD ROADS, FORESTRY, HOUSEHOLD AND MECHANIC ARTS; TO MAKE NEEDED IMPROVEMENTS ON THE GROUNDS AND BUILDINGS NOW LOCATED AT THE FORT LEWIS SCHOOL IN LA PLATA COUNTY.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. That there is hereby established at the Fort Lewis School in La Plata County a school of Agriculture, Mechanic Arts and Household Arts upon the grounds heretofore accepted by the Governor of the Stateof Colorado, and now owned and held by

the United States under the provisions of an Act of the Sixty-first Congress of the United States, entitled: 'AN ACT FOR MAKING APPROPRIATIONS FOR THE CURRENT AND CONTINGENT EXPENSES OF THE BUREAU OF INDIAN AFFAIRS, FOR FULFILLING TREATY STIPULATIONS WITH VARIOUS INDIAN TRIBES AND FOR OTHER PURPOSES, FOR THE FISCAL YEAR ENDING JUNE 30,1911' Approved April 4, 1910.

Section 2. That for the purpose of equipping , organizing and maintaining said School of agriculture mechanic arts and household arts there is hereby appropriated out of any money belonging to the General Fund, not otherwise appropriated, for the biennial period of 1911 and 1912, the sum of $50,000.

Section 3. That from and after the passage and approval of this Act, the State Board of Agriculture shall take and assume control of the lands, buildings and equipments at Fort Lewis School, now owned and held by the State, and the said lands, buildings and equipments shall thereafter become and be a part of the Agricultural college System of the State and shall be controlled and managed under the same laws , rules and regulations, by the State Board of Agriculture as the Agricultural College at Fort Collins; provided that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils.

Section 4. That the money hereby appropriated shall be paid out upon vouchers drawn upon the Auditor of State by the State Board of Agriculture; provided that not less than one-half of the amount hereby appropriated shall be expended for the equipment of said school, and not more than one-half for the expenses of the maintenance thereof during the biennial period of 1911 and 1912.

Section 5. In the opinion of the General Assembly an emergency exists, and said Act shall take effect and be in force from and after its approval.

Stephan R. Fitzgarrald,
President of the Senate,

George McLaughlin,
Speaker of the House of Representatives.

Approved January 25th,1911.

JOHN F. SHAFROTH,
Governor of the State of Colorado."

Approved.

Endorsed

"STATE OF COLORADO SENATE BILL NO. 1.

AN ACT ESTABLISHING A SCHOOL OF AGRICULTURE AND MECHANIC ARTS,AT THE FORT LEWIS SCHOOL,IN LA PLATA COUNTY,UNDER THE TERMS, PROVISIONS, GRANTS AND CONDITIONS OF AN ACT PASSED BY THE SIXTY FIRST CONGRESS OF THE UNITED STATES, ENTITLED "AN ACT MAKING APPROPRIATIONS FOR THE CURRENT AND CONTINGENT EXPENSES OF THE BUREAU OF INDIAN AFFAIRS, FOR FULFILLING TREATY STIPULATIONS WITH VARIOUS INDIAN TRIBES AND FOR OTHER PURPOSES, FOR THE FISCAL YEAR ENDING JUNE 30,1911," APPROVED APRIL 4; 1910, and FOR MAKING AN APPROPRIATION FOR THE PURPOSE OF ERECTING AND EQUIPPING NEW BUILDINGS, CARRYING ON EXPERIMENTAL WORK ALONG THE LINES OF AGRICULTURE, HORTICULTURE, ANIMAL INDUSTRY, IRRIGATION, DRAINAGE, GOOD ROADS, FORESTRY, HOUSEHOLD AND MECHANIC ARTS: TO MAKE NEEDED IMPROVEMENTS ON THE GROUNDS AND BUILDINGS NOW LOCATED AT THE FORT LEWIS SCHOOL IN LA PLATA COUNTY.

STATE OF COLORADO, SS.
This Act originated in the Senate,

Chas. H. Leckenby,
Secretary of the Senate.

STATE OF COLORADO,) SS
Secretary's Office)
This Act was filed in my office this 25th day of January A.D., 1911, at 12:05 o'clock P M.

James B. Pearce,
Secretary of State

By Thomas F. Dillon,Jr.. Deputy Secretary."

THEREFORE, in consideration of the premises and of the grant aforesaid, I, JOHN F. SHAFROTH, Governor of the State of Colorado, for and on behalf of the said State of Colorado, do hereby accept the property known as the Fort Lewis School, including the lands, buildings and fixtures pertaining to said school upon the terms and conditions named in the said Act of Congress of the United States of America, passed at the Second Session of the Sixty-first Congress, entitled: "An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs for fulfilling treaty stipulations with various Indian tribes, and for other purposes for the fiscal year ending June 30, 1911," and approved April 4, 1910.

IN WITNESS WHEREOF I have hereunto set my hand and caused these presents to be attested by the Secretary of State of the State of Colorado, and the Great Seal of the State of Colorado to be hereunto affixed, at Denver, this Twenty-fifth day of January, A.D., 1911

John F. Shafroth

Governor of the State of Colorado.

Attest.

Secretary of State.

49

Appendix C

1916 Modification of Section 5 as quoted in Appendix A:

> That the lands, buildings, fixtures, and all property rights granted to the State of Colorado for educational purposes by section five of the Act of Congress approved April fourth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page two hundred and seventy-three), may, in lieu of the use designated in said grant, be utilized by said State for the care of the insane, as an agricultural experiment station, or for such other public purposes as may be authorized by the legislature of the State: Provided, That Indians shall always be admitted to such institutions free of charge and upon an equality with white persons.

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39 Stat. 128

Appendix D

Colorado Statutes Relating to Transfer of Use for Grand Junction Grant (Colorado Revised Statutes 1963)

Grand Junction School

Editor's note: This article has not been repealed; it is here preserved to show acceptance of a grant of land by congress; its use is now under article 4 of chapter 71, which in respect to name and use supersedes this article; see also 39 Stat. 1916, p. 128, permitting change of use.

Grand Junction school.
Part of agricultural college system.

124-15-1. Grand Junction school.—There is hereby established at the Grand Junction Indian School in Mesa county, a school of horticulture, forestry and vocational learning, upon the grounds to be accepted by the governor of the state of Colorado and now owned and held by the United States under the provisions of an act of the sixty-first congress of the United States, entitled, "An act for making appropriations for the current and contingent expenses of the bureau of Indian affairs, for fulfilling treaty stipulations with various Indian tribes and for other purposes, for the fiscal year ending June 30, 1911," approved April 4, 1910.

Source: L. 11, p. 145, § 1; C. L. § 8151; CSA, C. 38, § 102; CRS 53, § 124-15-1.

Cross reference: For addition of buildings for state training home on this land, see 71-4-8; for jurisdiction ceded to United States, see 143-1-28.

124-15-2. Part of agricultural college system.—The state board of agriculture shall take and assume control of the lands, buildings and equipment at the Grand Junction Indian School, now owned and held by the United States, and the said lands, buildings and equipment shall be a part of the agricultural college system of the state, and shall be controlled and managed under the same laws, rules and regulations, by the state board of agriculture as the agricultural college at Fort Collins; provided, that the Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white people.

Source: L. 11, p. 146, § 3; C. L. § 8152; CSA, C. 38, § 103; CRS 53, § 124-15-2.

Homes for Mental Defectives

71-4-1. State home and training school established.—There is hereby established the state home and training school. The essential object of said school and home shall be the mental, moral, physical education and training of feeble-minded children and the treatment and care of persons so mentally defective as to be incompetent to care for themselves or their property.

Source: L. 09, p. 180, § 1; C. L. § 583; CSA, C. 105, § 48; CRS 53, § 71-4-1.

71-4-8. Addition to home.—There is hereby established on the property of the state at the former Indian school at Grand Junction, Colorado, an addition to the state home and training school.

Source: L. 19, p. 267, § 1; C. L. § 590; CSA, C. 105, § 55; CRS 53, § 71-4-8.

Appendix E

Article 14 of Chapter 124
Colorado Revised Statutes 1963, as Amended

Fort Lewis College

124-14-1.	School at Fort Lewis.	124-14-7.	Board prepare plans and construct.
124-14-2.	Part of agricultural college system.	124-14-8.	Constructed by board.
124-14-3.	Endowment fund.	124-14-9.	Purpose of buildings.
124-14-4.	Development of natural resources.	124-14-10.	Tax levy.
124-14-5.	Leasing of mineral lands.	124-14-11.	Anticipation warrants authorized.
124-14-6.	Investment of funds.		

124-14-1. School at Fort Lewis.—There is hereby established at the Fort Lewis school in La Plata county a school of agriculture, mechanic arts and household arts upon the grounds heretofore accepted by the governor of the state of Colorado, and now owned and held by the United States under the provisions of an act of the sixty-first congress of the United States, entitled "An act for making appropriations for the current and contingent expenses of the bureau of Indian affairs, for fulfilling treaty stipulations with various Indian tribes and for other purposes, for the fiscal year ending June 30, 1911," approved April 4, 1910.

Source: L. 11, p. 39, § 1; C. L. § 8144; CSA, C. 38, § 90; CRS 53, § 124-14-1.

Cross reference: For jurisdiction ceded to United States, compare 143-1-16.

124-14-2. Part of agricultural college system.—The state board of agriculture shall take and assume control of the lands, buildings and equipments at Fort Lewis school, now owned and held by the state, and the lands, buildings and equipment shall be a part of the agricultural college system of the state, and shall be controlled and managed under the same laws, rules and regulations by the state board of agriculture as the Colorado state university; provided, that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils.

Source: L. 11, p. 40, § 3; C. L. § 8145; CSA, C. 38, § 91; CRS 53, § 124-14-2.

124-14-3. Endowment fund.—In accordance with the provisions of an act of congress approved April 4, 1910, which granted to the state of Colorado the property known as the Fort Lewis school, including lands, buildings and fixtures, and providing "That said lands and buildings shall be held and maintained by the state of Colorado as an institution of learning and that Indian pupils shall at all times be admitted to such school free of charge for tuition on terms of equality with white pupils" and in accordance with sections 124-14-1 and 124-14-2, all rentals and royalties derived from leases of coal measures, mineral deposits and oil structures contained in said lands shall constitute a permanent endowment fund for the Fort Lewis school to be known as the "Fort Lewis school endowment fund."

Source: L. 25, p. 260, § 1; CSA, C. 38, § 98; CRS 53, § 124-14-8.

124-14-4. Development of natural resources.—The state board of land commissioners and the state board of agriculture are hereby authorized and directed to develop such coal measures, mineral deposits and oil structures under lease executed jointly, and providing for such statutory royalties or other rentals as may be agreed upon, and wherein the obligations assumed by the state of Colorado shall be faithfully kept, and mining or drilling operations be not permitted to interfere with the conduct and operation of the Fort Lewis school.

Source: L. 25, p. 261, § 2; CSA, C. 38, § 99; CRS 53, § 124-14-9.

General:

Fort Lewis school lands granted by an act of Congress are subject to the provisions of article IX, § 10, of the constitution, and the state board of land commissioners is the sole authority for execution of oil and gas leases on said lands; and statutes requiring consent of other public authorities are invalid. Sunray Mid-Continent Oil Company v. State (1962) 149 C. 159, 368 P.2d 563.

124-14-5. Leasing of mineral lands.—Applications for leases of the coal measures, mineral deposits and oil structures shall be made to the state board of land commissioners, which board, with the consent and approval of the state board of agriculture, shall execute such leases as required by law, and all rentals and royalties from such leases shall be certified to the state treasurer and credited to the permanent endowment fund designated in section 124-14-3.

Source: L. 25, p. 261, § 3; CSA, C. 38, § 100; CRS 53, § 124-14-10.

124-14-6. Investment of funds.—This permanent endowment fund shall be invested by the state board of agriculture for the use and benefit of the Fort Lewis school in bonds of the United States or in securities which are general obligations of the state of Colorado or of school districts or municipalities within said state; provided, such securities shall be approved as to legality by the attorney general.

Source: L. 25, p. 261, § 4; CSA, C. 38, § 101; L. 43, p. 582, § 1; CRS 53, § 124-14-11.

124-14-7. Board prepare plans and construct.—The state board of agriculture is hereby authorized and directed to have prepared plans for a building or buildings to be constructed on the following described property located in La Plata County, Colorado, for purposes of the Fort Lewis school, Hesperus, Colorado, said property being grounds owned by the state board of agriculture to be used for the purposes of said school and upon approval of said plans by the board, to begin construction of said building or buildings:

A tract of land lying and being in Sections Twenty (20), Twenty-eight (28) and Twenty-nine (29) all in Township 35 North, Range 9 West, N.M.P.M. La Plata County, Colorado, and being more particularly described as follows, to-wit: Beginning at the Northeast corner of said tract, being identical with the Northeast corner of the SE¼ SE¼ of Section 20, Township 35 North, Range 9 West, N.M.P.M., thence running from said point of beginning South 0° 37′ East, 850.00 feet; thence running South 43° 29′ West, 674.67 feet; thence running South, 850.00 feet; thence running South 45° 11′ East, 475.01 feet; thence running South 30° 47′ West, 719.29 feet; thence running South 33° 37′ West, 748.36 feet; thence running East, 678.61 feet; thence running North 45° 00′ East, 1579.54 feet; thence running North 89° 29′ East, 415.42 feet; thence running South, 1310.41 feet; thence running West, 2434.52 feet; thence running North 29° 14′ West, 2002.95 feet; thence running North 14° 51′ East, 655.29 feet; thence running North 89° 38′ East, 752.63 feet;

thence running North, 225.00 feet; thence running North 0° 34′ West, 1336.51 feet; thence running North 89° 38′ East, 1195.15 feet, to the Northeast corner, the point of beginning, containing 139.93 acres, more or less.

Source: L. 47, p. 465, § 1; Not in CSA; CRS 53, § 124-14-12; L. 54, p. 159, § 1; L. 55, p. 831, § 1.

124-14-8. Constructed by board.—Said buildings shall be constructed by the state board of agriculture, in conformity with the plan for public works within the state of Colorado prepared and published by the director of planning, and shall be and remain under its management and control in the same manner that said board now maintains and controls the buildings of the Fort Lewis school, at Hesperus.

Source: L. 47, p. 465, § 2; Not in CSA; CRS 53, § 124-14-13.

124-14-9. Purpose of buildings.—Said buildings when completed shall be used only for purposes of the Fort Lewis school, at Hesperus.

Source: L. 47, p. 465, § 3; Not in CSA; CRS 53, § 124-14-14.

124-14-10. Tax levy.—(1) There shall be levied and assessed on all taxable properties within this state, both real and personal, in the years 1955, 1956, 1957, 1958 and 1959, in addition to all other levies for the Fort Lewis school, a tax of five thousand two hundred sixty-three hundred thousandths mill (.05263 mill) on each and every dollar of assessed valuation and for the years 1960, 1961, 1962, 1963 and 1964, in addition to all other levies for the Fort Lewis school a tax of one thousand four hundred hundred thousandths mill (.01400 mill) on each and every dollar of assessed valuation. Said taxes shall be assessed and collected in the same manner and at the same time as is provided by law for the assessment and collection of other revenues, and when so collected shall be paid by the state treasurer to the credit of the appropriation hereby made.

(2) The entire funds and monies derived from such levies each year, or so much thereof as may be necessary, are hereby appropriated to the state board of agriculture for the purpose of carrying out the provisions of sections 124-14-7 and 124-14-8 except that such buildings shall be constructed at Durango and for the equipping and furnishing of said buildings and for the remodeling of, addition to and improvement of existing buildings and facilities of Fort Lewis school; provided, that no monies hereby appropriated or which have heretofore been appropriated and remain uncommitted shall be committed or spent until the need for such facilities and the plans and specifications for proposed buildings shall have been reviewed and approved by a joint interim committee on state building of the house and senate of the Colorado general assembly if such a committee shall have been created by joint resolution by the two houses or provided for in the joint rules of the two houses and be in existence.

(3) Such review and approval shall be in addition to all other approvals now required by law. The report of such committee in reviewing and approving such construction shall be filed with the state controller and no voucher drawn against said appropriation shall be by him allowed until filing is made.

(4) Nothing herein shall be construed to affect the validity of any outstanding anticipation warrants heretofore issued pursuant to the provisions of section 124-14-11 against any state building mill levy heretofore assessed and appropriated for the Fort Lewis school and the appropriation hereby made shall be first applied to such warrants; likewise nothing

herein shall be construed to eliminate any balance of funds on hand which have been collected or which will be collected from any state building mill levy assessed in previous years for the Fort Lewis school.

Source: L. 47, p. 465, § 4; Not in CSA; CRS 53, § 124-14-15; L. 55, p. 838, § 1.

124-14-11. Anticipation warrants authorized.—(1) The state treasurer is hereby authorized and directed to issue anticipation warrants in payment of all expenditures made from the tax levied in section 124-14-10 by the state board of agriculture under authority of sections 124-14-7 to 124-14-11, upon presentation of vouchers certified by said board, provided that the director of planning shall first have certified to him, in writing, its opinion that the building or other improvement proposed is included in the provisions of sections 124-14-7 to 124-14-11 and constitutes a need of such emergent importance that the issuance of such anticipation warrants is justified.

(2) Said anticipation warrants shall be payable out of moneys hereby appropriated and shall bear interest at not to exceed three per cent per annum from date of presentation until paid; but in no event shall the total amount of said warrants exceed eighty per cent of the amount hereby appropriated. The faith and credit of the state is hereby pledged for the payment of principal and interest on said anticipation warrants.

Source: L. 47, p. 466, § 5; Not in CSA; CRS 53, § 124-14-16.

124-14-12. Name of school changed.—The Fort Lewis school at Durango, Colorado, declared to be an institution of the state by section 124-14-2, C.R.S. 1963, shall hereafter be designated under the name and title of the "Fort Lewis college"; provided, that the legal effect of any statute heretofore designating such institution by any other name, or any property rights heretofore acquired and obligations heretofore incurred under any other name, shall not be impaired hereby.

Source: L. 64, p. 642, § 1.

APPENDIX F

In reply refer to:
H-66-1173.9

C
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Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

November 1, 1966

Memorandum

TO: Assistant Commissioner (Education), Bureau of Indian Affairs

FROM: Associate Solicitor, Indian Affairs

SUBJECT: Education of Indian Students at Fort Lewis, College, Durango, Colorado

In your memorandum of August 26, 1966, and attached correspondence, you have indicated that Fort Lewis College faces financial problems because of the large numbers of Indian students who attend on a tuition-free basis. You inquire whether the statutory requirements for free tuition for Indian students could, in effect, be waived for out-of-state Indian students whose tuition expenses would then be covered by grants from the Bureau.

In my opinion this procedure would not carry out the legislative intent of the Act of March 3, 1909 (35 Stat. 781, 788) and the Act of April 4, 1910 (36 Stat. 269, 274). These appropriation acts for the fiscal years ending June 30, 1910 and 1911 granted the Fort Lewis School, a non-reservation school for Indians maintained by the Bureau of Indian Affairs, its lands, buildings and fixtures, to the State of Colorado with the proviso that "said lands and buildings shall be held and maintained by the State of Colorado as an institution of learning, and that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils." The 1910 Act extended the acceptance deadline until July 1911, but did not appropriate further funds for education of Indians at the school since the Commissioner of Indian Affairs had recommended that the Bureau discontinue the school. House Doc. No. 1071, 60th Cong. 2d Sess.; Report of the Secretary of the Interior, February 23, 1910, on amendment to H.R. 19028, Fort Lewis School.

The Governor of the State of Colorado accepted the Federal grant, and in 1911 the State legislature established on the land a State school as a part of the agricultural college system, with the same tuition free proviso for Indian pupils as was contained in the Congressional enactments. L. 1911, p. 39; C.R.S. §§ 124-14-1, 124-14-2 (1963). In further recognition of the tuition-free educational obligations to Indians, the Colorado legislature provided in 1925 for an endowment fund from the proceeds of mineral leases on the land. L. 1925, p. 260, C.R.S. § 124-14-3 (1963).

According to the background material you have supplied - specifically, A Proposal for a Grant for an Experimental Program in Indian Education - it appears that between 1891 and 1910 the Fort Lewis School was operated for Indian children, with as many as 400 pupils in attendance at one time. The appropriation act for fiscal year 1910 (35 Stat. 781) provided funds for 200 Indian pupils. Apparently, after the transfer to the State of Colorado, far fewer Indian students attended the State institution, which was first maintained as a high school and later, beginning in 1927, as a college. There was, however, no stipulation when the school was transferred to the State as to numbers or places of residence of the potential Indian students. The 1964-1965 enrollment indicates 95 Indian students - less than half the number provided for immediately prior to transfer.

We do not mean to suggest that the Colorado legislature, in 1911, was either thinking or not thinking in terms of the numbers of Indian students for whom the State would be obligated to furnish tuition or of their place of residence or the costs involved. Apparently the school originally served primarily the Southern Utes. It appears also that school attendance had fallen to 34 during the 1909 school term. (Letter July 30, 1909, Hesperus, Colorado, from School Superintendent, in Report of Commissioner of Indian Affairs for 1909.) The fact remains, however, that the federal grant was made and accepted with the concomitant and unconditioned obligation to provide tuition-free education to Indians, without limitation on numbers or place of residence.

It is clear from the December 1908 report by the Commissioner of Indian Affairs on Disposition of Certain Non-Reservation Indian Schools that, in negotiating for the transfer of these school properties "the idea kept foremost in our correspondnnce with the State authorities was that any Indians who came into the reorganized institution should receive free tuition, paying the uniform charges for anything else just as non-Indian pupils would." House Doc. No. 1071, 60th Cong. 2d Sess., supra. (Free tuition for Indians was, in fact, made a requirement when the Chamberlain, South Dakota school was transferred to a private group for school purposes.)

In my view, congressional action would therefore be needed to remove the requirements of the 1909 and 1910 acts and to authorize appropriation of funds for tuition grants for Indian pupils at Fort Lewis College or for some alternative form of federal subsidy for the college. We see no possibility of administrative waiver of the statutory provision, however, onerous it may be and however desirable it may be to provide relief from its requirements.

/S/ Richmond F. Allan

Richmond F. Allan

Appendix G

71-4562

The State of Colorado

DEPARTMENT OF LAW

DUKE W. DUNBAR
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
104 STATE CAPITOL
DENVER, COLORADO 80203

JOHN P. MOORE
DEPUTY ATTORNEY GENERAL

March 18, 1971

Representative Clarence Quinlan
Chairman
Committee on Indian Enrollment
Problems
State Capitol
Denver, Colorado

Dear Representative Quinlan:

In response to your request for an opinion relative to Fort Lewis College and the federal land grant at Hesperus, the following is submitted:

QUESTION 1. "Do the terms of the congressional grant of 1910 (36 Stat. 274), as modified in 1916 (39 Stat.128) -- apart from the provisions of existing state statutes -- require the state to maintain a school on the Fort Lewis land at Hesperus in order to retain the property?"

CONCLUSION: No.

ANALYSIS: The terms of the original statute transferring the property known as the Fort Lewis School provided: "... that said lands and buildings shall be held and maintained by the State of Colorado as an institution of learning, and that Indian pupils shall at all times be admitted to such school free of charge for tuition and on terms of equality with white pupils." 36 Stat. 274 (1910). Congress later provided that the lands and properties may "... in lieu of the use designated in said grant, be utilized by the state for the care of the insane, as an agricultural experiment station, or for such other public purpose as may be authorized by the legislature of the state; Provided, that Indians shall always be admitted to such institutions free of charge and upon equality with white persons." 39 Stat. 128 (1916). The amendatory act permits the state to utilize such property for an agricultural experiment station (its present use) and

for such other public purpose as may be authorized by the legislature of the state. The amendatory act therefore clearly eliminates the requirement of maintenance or use as an institution of learning. The state therefore, is in compliance with the terms of the grant as amended. Attorney General's Opinion 61-3550.[1]

QUESTION 2. "The Fort Lewis land grant property is presently being used as an agricultural experiment station. Under the terms of the grant as described above, is this permitted? If so, should the change in use be authorized by state statute? Must the State Board of Agriculture pay a rental charge to the State Board of Land Commissioners for such use?"

CONCLUSION: Question 2(a). Yes.
Question 2(b). Not required.
Question 2(c). No.

ANALYSIS: The analysis in response to question 1 applies equally to Question 2(a). In response to Question 2(b), it is not required that the General Assembly ratify or confirm the existing use. Section 10, Article IX, Constitution of Colorado grants to the State Board of Land Commissioners sufficient authority to supervise and oversee compliance with the terms of the grant.

As to Question 2(c), the terms of the grant make no provision for payment of rent when the land grant is utilized in a manner consistent with the terms of the grant.

QUESTION 3. "Must the Fort Lewis school endowment fund be preserved for the benefit of Fort Lewis College or the agricultural experiment station at Hesperus, or could the Colorado General Assembly, by statute, abolish said fund or devote its principal and interest, together with future revenues from the Hesperus property, to other state purposes?"

CONCLUSION: The Fort Lewis school endowment fund may be devoted to such public purpose as is authorized by the legislature of the state.

ANALYSIS: By the use of the term Fort Lewis school endowment fund, it is assumed that the question relates to the

1. Attorney General's Opinion 53-2484 did not consider the effect of the amendatory act and any statement therein contrary to the opinion herein expressed is hereby overruled.

income derived from the sources specified in C.R.S. '63, 124-14-3 to 5. The cited sections relate to "... rentals and royalties derived from leases of coal measures, mineral deposits and oil structures." Although the Colorado Supreme Court has held that the State Board of Land Commissioners has exclusive jurisdiction over the property, the Hesperus grant is not a part of the public school fund; and therefore, the use of the income derived therefrom is not limited by the terms of Section 3, Article IX, Constitution of Colorado. Sunray Mid-continent Oil Company v. State, 149 Colo. 159, 368 P.2d 563 (1962). In addition, the terms of the federal grant do not specifically address themselves to the use of income derived from the land grant. Therefore, since the land may be utilized for the enumerated purposes or such other public purpose as may be determined by the General Assembly and no express requirement controls the disposition of the income, the income may be applied to such state purpose as is determined by the General Assembly.

QUESTION 4. "Do the terms of the congressional grant itself, as cited above -- apart from existing state statutes -- apply in any way to Fort Lewis College now that it is located in Durango? Is it within the prerogative of the Colorado General Assembly to amend the state's statutes concerning the admission of Indian students to Fort Lewis College without payment of tuition?"

CONCLUSION: Question 4(a). No.
Question 4(b). Yes.

ANALYSIS: The analyses in response to questions 1 and 2 are determinative of the issue raised by question 4(a). As to question 4(b) the only applicable stipulation of the land grant as amended is that Indians shall always be admitted free of charge and upon equality with white persons to institutions which are maintained on or within the land grant. Therefore, the Colorado General Assembly is not inhibited by the terms of the land grant from altering the subject statutory provision.

QUESTION 5. "Can Colorado constitutionally limit the Indian enrollment at Fort Lewis College either by number or by percent of student body?"

CONCLUSION: No.

ANALYSIS: There are many varied and valid bases upon which enrollment in a state institution of higher learning may be predicated. However, any attempt to limit enrollment in the manner stated constitutes a proscribed distinction or classification based upon race. Attorney General's Opinion 70-4418.

QUESTION 6. "Can Colorado constitutionally direct that Indian students be admitted tuition-free while members of other ethnic groups are considered for tuition waivers based largely on need?"

CONCLUSION: No.

ANALYSIS: The principle enunciated by me in Attorney General's Opinion 70-4418 is dispositive of the issue raised by question 6. In pertinent part it was stated:

> "While it has been held that racial distinctions which themselves tend to achieve racial equality or balance do not violate the equal protection clause of the Fourteenth Amendment to the United States Constitution we here have an entirely different matter. Granting the theory that not all distinctions of a racial nature result in a denial of equal protection, we are faced with the Colorado Constitution which will not permit any distinction or classification on the basis of race to be made in the public schools, seemingly regardless of purpose.
>
> Were we to say Article IX, Section 8 has no application here, we would have to overlook its clear and unequivocal language. While one could perhaps reach a different conclusion if Article IX, section 8 did not exist, particularly if the issue was raised only as a question of equal protection, I find my present conclusion inescapable.
>
> While I have found no Colorado case in point on the application of Article IX, section 8 to this problem, I cannot believe our Court would reach a contrary conclusion. Clearly, in the adoption of the amendments to 25-1-1 in 1969, the public policy against racial or ethnic discrimination in any form has been established.
>
> Moreover, I cannot believe that a college or university may discriminate on the basis of race simply because the language of the Constitution uses the words

"public school." In this context I would believe the word "school" includes any type of educational institution as the word "school" does not always exclude universities. Cf. Xavier University v. Thigpen, (La.) 151 So 2d 550. Moreover, I could find no reason to conclude primary and secondary schools in this state may not make distinctions or classifications on the basis of race or color, but colleges and universities may do so. Such a conclusion would be necessary if we conclude Article IX, section 8 does not apply here."

QUESTION 7(a): "Under the terms of existing state statutes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

(A) Limit the enrollment at Fort Lewis College:

(1) in total number of students?
(2) in number or percent of non-residents?
(3) in terms of academic preparation and qualifications?
(4) in number or value of tuition waivers?"

CONCLUSION: Yes.

ANALYSIS: All four of the methods stated as a basis for limitation of enrollment are traditional bases upon which in whole or part state institutions of higher education in Colorado have from time to time limited enrollment. I am unaware of any legal basis which would require one to opine that any one or combination thereof is impermissible.

QUESTION 7(b): "Under the terms of existing state statutes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

***

(B) Establish a maximum number, percent, or dollar value of Indian tuition waivers considering the funds appropriated and available for this and other purposes?"

CONCLUSION: No.

ANALYSIS: Limitation in enrollment is basically an administrative question. It is a function of the application of

admission criteria and the determination of the number of admissions based upon available resources. The existing statute relating to admission of Indians presents two questions. One is admission, the second is payment of tuition. The establishment of admission criteria is a question addressed to the responsible administrative authorities. Once, however, an Indian student is admitted having complied with the criteria established, the state may not impose or collect tuition from that student for attendance at Fort Lewis College. Therefore, Indians must be admitted on the same basis as any other race and not be refused admittance because of their race. Attorney General's Opinion 61-3550. As a result, as previously stated, there are many valid bases upon which enrollment limitations may be predicated. Race, per se, however, is not a constitutionally permissible basis. The existing statute likewise proscribes such a course of action.

QUESTION 7(c): "Under the terms of existing state statutes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

***

(C) Establish different requirements for admission of residents than for non-residents?"

CONCLUSION: Yes.

ANALYSIS: State statute does not prohibit the State Board of Agriculture from establishing different requirements for admission of residents than for non-residents; provided, that the admission criteria established for each class, are applied uniformly to those who fall within a given class.

QUESTION 7(d): "Under the terms of existing state statutes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

***

(D) (1) Establish admission standards for all students to a special collegiate program designed to help Indians, which admission standards are more lenient than for regular collegiate programs?

(2) Establish admission standards for all students to a special pre-collegiate program designed to help Indians, which admission standards are more lenient than for regular collegiate programs?"

CONCLUSION: Yes.

ANALYSIS: The governing board of Fort Lewis College, the State Board of Agriculture, is vested with the authority of general control and supervision of Fort Lewis College. C.R.S. '63, 124-14-2. The authority to determine curriculum is included within the authority of general control and management. The governing board therefore is vested with the authority to establish programs within the framework of its statutory authority and to promulgate appropriate admission criteria therefor. Attorney General's Opinion 61-3466.

QUESTION 7(e). "Under the terms of existing state statutes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

***

(E) Establish more lenient admission standards for Indians than for others:

(1) in the regular college program?
(2) in a special collegiate program designed to help Indians succeed in college?
(3) in a special collegiate program designed to help Indians?"

CONCLUSION: No.

ANALYSIS: The comments included in the analyses to questions 5, 6 and 7(b) are equally applicable and determinative of the issues raised by question 7(e).

QUESTION 7(f): "Under the terms of existing state statutes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

***

(F) Establish the maximum size of any of the above mentioned special programs in terms of budget, number of students, or tuition waivers?"

CONCLUSION: Yes. (Special programs described in Question 7(d)).

ANALYSIS: The response to question 7(d) is equally applicable to this question.

QUESTION 7(g). "Under the terms of existing state stat-

utes, including the provision for tuition-free education for Indians on terms of equality with white pupils, may the State Board of Agriculture:

(G) Charge tuition or fee for any such special program?"

CONCLUSION: No as to Indian students and yes as to other students.

ANALYSIS: Existing statute requires that Indian pupils be admitted to Fort Lewis College free of charge for tuition. C.R.S. '63, 124-14-2. Therefore, Indian pupils may not be charged tuition. As to other students, the Board may fix tuition for such course in accordance with its statutory authority. C.R.S. '63, 124-14-2; C.R.S. '63, 124-10-8 (§13, Ch. 85, S.L. '70).

Respectfully submitted,

Duke W. Dunbar
DUKE W. DUNBAR
Attorney General

DWD:JEB:rj